Re Tan Hwee Earn; ex p The People's Insurance Co (M) Sdn Bhd

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO D5–29–2355 OF 1996
STEVE SHIM J
10 MAY 1999

Bankruptcy *— Creditor's petition — Whether application premature — Whether there was obligation to serve creditor's petition together with affidavit — Whether creditor's petition was wrongly titled — Bankruptcy Act 1967 ss 3(1), (2), 6(1) & 131 — Bankruptcy Rules 1969 rr 95, 106 & 109*

Bankruptcy *— Notice — Whether judgment was final — Whether debtor had established existence of counterclaim/cross demand — Bankruptcy Act 1967 s 3(1)(i)*

On 30 January 1996, the creditor obtained a judgment in default against the debtor. A bankruptcy notice ('the BN') was filed on 23 August 1996. On 8 November 1996, the BN was served on the debtor. The debtor responded by filing a summons-in-chambers (encl 14) to set aside the BN on 15 November 1996 which was supported by an affidavit. The creditor then filed a creditors petition ('the CP') on 11 December 1996 together with the affidavit of truth of statements affirmed by one Song Knee Nyok on the same date. The CP was served on the debtor on 17 December 1996. Thereafter, the debtor filed an application to strike out and/or set aside the CP vide a summons-in-chambers (encl 11) dated 3 April 1997 supported by an affidavit. Both the applications were heard by the senior assistant registrar who dismissed encl 14 but allowed encl 11. Hence the two appeals herein.

The debtor's application to set aside the BN was based on two grounds, namely: (i) that the judgment was not a final judgment within the meaning of s 3(1)(i) of the Bankruptcy Act 1967 ('the Act'); and (ii) in any event, the debtor had established the existence of a counterclaim/cross demand under s 3(1)(i) of the Act which would entitle him to have the BN set aside. In respect of encl 11, the three grounds raised by the debtor were: (i) the title to the CP should be 'Petisyen Sipiutang' (Creditor's Petition) and not 'Permohonan Sipiutang' (Creditor's Application); (ii) the debtor has alleged that the CP was not served together with the affidavit verifying the contents of the CP; and (iii) the CP was premature as at the time it was presented; the debtor had already filed an application to set aside the BN within the seven day period prescribed by r 95 Bankruptcy Rules 1969 and therefore no act of bankruptcy was deemed to have been committed under the notice until the application had determined.

Held:

(1) The creditor's claim against the debtor was for a liquidated amount and the debtor had defaulted in failing to appear in court

to counter the claim in Civil Suit No D5–22–145–1995. The judgment in default would constitute a final judgment for the sum claimed by the creditor against the debtor in this case (see p 253F); *Adzmi bin Ali & Anor v Mohamed Isa bin Kasad* [1987] 2 MLJ 199 followed.

(2) Although the affidavit supporting the summons-in-chambers filed by the debtor was filed within the time frame provided under s 3(1)(i) of the Act, it did not however allude therein that the debtor had a counterclaim, set-off or cross demand which would equal or, exceed the amount of the judgment or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained and therefore had not complied with the requirement under s 3(1)(i) of the Act and with r 95 of the Rules. Applying the Supreme Court in *Datuk Lim Kheng Khim v Malayan Banking Bhd* [1993] 2 MLJ 298, it must be treated as if no affidavit had been filed for the purpose of this application (see p 254D–F).

(3) The debtor, in filing the summons-in-chambers (encl 14) together with the supporting affidavit had, in effect, disputed the sum stated in the BN. If it was intended to rely on s 3(2) proviso (ii) of the Act, there would still be a need to give a seven-day notice (see p 254F–H); *Malayan Banking Bhd v Datuk Lim Kheng Khim* [1992] 2 MLJ 540 followed.

(4) For the purpose of the CP, 'Petisyen Sipiutang' or the term 'Permohonan Sipiutang' means the same thing (see p 255B). As there was no statutory obligation on the part of the creditor under s 6(1) read with r 109 to serve the CP together with the affidavit of truth of statements in the petition affirmed by Song Knee Nyok, there could therefore be no violation of the provisions thereof (see p 256C–D); *Re Yap Kin; ex p United Malayan Banking Corp Bhd* [1996] 5 MLJ 355 and *Re Dato Othman Bokhari; ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 followed.

(5) As the debtor failed to comply with the provisions of s 3(1) and (2) of the Act read with r 95 of the Rules, it must be treated as if no application by way of affidavit had been made. The so-called application by way of summons-in-chambers (encl 14) was therefore a non-starter (see p 256F).

[Bahasa Malaysia summary

Pada 30 Januari 1996, pemiutang memperolehi suatu penghakiman ingkar terhadap penghutang. Suatu notis kebankrapan ('BN tersebut') telah difailkan pada 23 Ogos 1996. Pada 8 November 1996, BN tersebut disampaikan ke atas penghutang. Penghutang membalas dengan memfailkan suatu saman dalam kamar (kand 14) untuk mengketepikan BN tersebut pada 15 November 1996 yang disokong

oleh suatu afidavit. Pemiutang kemudiannya memfailkan suatu petisyen pemiutang ('CP tersebut') pada 11 Disember 1996 bersama-sama dengan afidavit kebenaran pernyataan-pernyataan yang diikrarkan oleh seorang Song Knee Nyok pada tarikh yang sama. CP tersebut disampaikan ke atas penghutang pada 17 Disember 1996. Selepas itu, penghutang memfailkan suatu permohonan untuk membatalkan dan/atau mengketepikan CP tersebut melalui saman dalam kamar (kand 11) bertarikh 3 April 1997 yang disokong oleh suatu afidavit. Kedua-dua permohonan telah didengar oleh penolong kanan pendaftar yang telah menolak kand 14 tetapi membenarkan kand 11. Maka kedua-dua rayuan ini.

Permohonan penghutang untuk mengketepikan BN tersebut adalah bergantung kepada dua alasan-alasan, iaitu: (i) bahawa penghakiman tersebut bukannya suatu penghakiman muktamad dalam maksud s 3(1)(i) Akta Kebankrapan 1967 ('Akta tersebut'); dan (ii) dalam apajua keadaan, penghutang telah membuktikan kewujudan suatu tuntutan balas/bersilang di bawah s 3(1)(i) Akta tersebut yang mana memberikan hak kepada beliau untuk mengketepikan BN tersebut. Berkenaan dengan kand 11, tiga alasan yang dibangkitkan oleh penghutang adalah: (i) tajuk kepada CP tersebut seharusnya 'Petisyen Pemiutang' dan bukan 'Permohonan Sipiutang'; (ii) penghutang telah mengatakan bahawa CP tersebut tidak disampaikan bersama-sama dengan afidavit menentusahkan kandungan-kandungan CP tersebut; dan (iii) CP tersebut adalah pramasa kerana pada masa ia dikemukakan; penghutang telah memfailkan suatu permohonan untuk mengketepikan BN tersebut dalam tempoh masa tujuh hari seperti yang ditetapkan oleh k 95 Kaedah-Kaedah Kebankrapan 1969 dan maka tiada perbuatan kebankrapan dianggap telah dilakukan di bawah notis tersebut sehingga permohonan tersebut telah diputuskan.

Diputuskan:

(1) Tuntutan pemiutang terhadap penghutang adalah untuk jumlah tertentu dan penghutang telah ingkar dalam gagal menghadirkan diri di mahkamah untuk membalas tuntutan dalam Guaman Sivil No D5–22–145–1995. Penghakiman ingkar tersebut adalah merupakan suatu penghakiman muktamad untuk jumlah yang dituntut oleh pemiutang terhadap penghutang di dalam kes ini (lihat ms 253F); *Adzmi bin Ali & Anor v Mohamed Isa bin Kasad* [1987] 2 MLJ 199 diikut.

(2) Walaupun afidavit menyokong saman dalam kamar yang difailkan oleh penghutang telah difailkan dalam jangka masa yang ditetapkan oleh s 3(1)(i) Akta tersebut, walau bagaimananpun ia tidak menyebut di dalamnya bahawa penghutang mempunyai tuntutan balas, tolakan atau tuntutan bersilang yang akan sama dengan atau, melebihi penghakiman atau jumlah yang diperintahkan untuk dibayar dan yang mana tidak dapat ditimbulkan dalam tindakan dalam mana penghakiman

diperolehi atau di dalam prosiding-prosiding dalam mana perintah diperolehi dan maka telah tidak mematuhi keperluan di bawah s 3(1)(i) Akta tersebut dan k 95 kaedah tersebut. Merujuk kepada Mahkamah Agung dalam *Lim Kheng Khim v Malayan Banking Bhd* [1993] 2 MLJ 298, ia mesti dianggap seolah-olah tiada afidavit telah difailkan untuk tujuan permohonan ini (lihat ms 254D–F).

(3) Penghutang, dalam memfailkan saman dalam kamar (kand 14) bersama-sama dengan afidavit sokongan telah, pada hakikatnya, mempertikaikan jumlah yang dinyatakan dalam BN tersebut. Jika diniatkan untuk bergantung kepada s 3(2) proviso (ii) Akta tersebut, masih akan wujud keperluan untuk memberikan notis tujuh hari (lihat ms 254F–H); *Malayan Banking Bhd v Datuk Lim Kheng Khim* [1992] 2 MLJ 540 diikut.

(4) Untuk tujuan CP tersebut, 'Petisyen Pemiutang' atau terma 'Permohonan Sipiutang' bermaksud perkara yang sama (lihat ms 255B). Memandangkan bahawa tiada terdapat keperluan statutori pada pihak pemiutang di bawah s 6(1) dibaca bersama-sama k 109 untuk menyampaikan CP tersebut bersama-sama afidavit kebenaran pernyataan-pernyataan di dalam petisyen yang diikrarkan oleh Song Knee Nyok, maka tiada wujud pencabulan peruntukan-peruntukan tersebut (lihat ms 256C–D); *Re Yap Kin; ex p United Malayan Banking Corp Bhd* [1996] 5 MLJ 355 dan *Re Dato Othman Bokhari; ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 diikut.

(5) Memandangkan penghutang telah gagal mematuhi peruntukan-peruntukan s 3(1) dan (2) Akta tersebut dibaca bersama-sama dengan k 95 kaedah tersebut, ia mesti dianggap seperti tiada permohonan melalui afidavit telah dibuat. Permohonan sedemikian melalui saman dalam kamar (kand 14) adalah suatu permulaan yang batal (lihat ms 256F).]

Notes

For cases on creditor's petition, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1626–1635.

For cases on notice , see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1699–1816.

Cases referred to

Adzmi bin Ali & Anor v Mohamed Isa bin Kasad [1987] 2 MLJ 199 (folld)

Datuk Lim Kheng Khim v Malayan Banking Bhd [1993] 2 MLJ 298 (folld)

Dato Othman Bokhari, Re; Ex p Diners Club (M) Sdn Bhd [1998] 4 CLJ Supp 315 (folld)

Haroun Al-Rashid Bin Mohd Yusof, Re; ex parte Daya Leasing Sdn Bhd [1996] 5 MLJ 317 (refd)

Malayan Banking Bhd v Datuk Lim Kheng Khim [1992] 2 MLJ 540 (folld)
Ooi Thean Chuan v Banque Nationale de Paris [1992] 2 MLJ 526 (refd)
Udos ak Riging, Re; ex p Seabanc Kredit Sdn Bhd [1994] 3 MLJ 383 (refd)
Yap Kin, Re; ex p United Malayan Banking Corp Bhd [1996] 5 MLJ 355 (folld)

Legislation referred to

Bankruptcy Act 1967 ss 3(1), (i), (2), 6(1), 131
Bankruptcy Rules 1969 rr 95, 106, 109, 117

Azlan Sulaiman (*Ghazi & Lim*) for the appellant.
CK Yeoh (*Othman Hashim & Co*) for the respondent.

Steve Shim J: There are two appeals before me — one by the debtor against the decision of the learned senior assistant registrar in dismissing his application in encl 14 to set aside the bankruptcy notice (BN) and the other by the creditor against the decision of the learned senior assistant registrar in allowing the debtor's application in encl 11 to strike out or set aside the creditors petition (CP).

The background to these appeals can be briefly stated herein. On 30 January 1996, the creditor obtained a judgment in default against the debtor for the sum of RM1.5m with interest at 8% pa from 1 October 1994 until full and final settlement. Pursuant thereto, the creditor initiated bankruptcy proceedings against the debtor by filing a request to issue bankruptcy notice and accordingly a bankruptcy notice was filed on 23 August 1996. On 8 November 1996, the said bankruptcy notice was served on the debtor. The debtor responded by filing a summons-in-chambers to set aside the BN on 15 November 1996 supported by an affidavit affirmed by the debtor on 14 November 1996. The creditor then filed a CP on 11 December 1996 together with the affidavit of truth of statements affirmed by one Song Knee Nyok on the same date. The CP was served on the debtor on 17 December 1996. Thereafter, the debtor filed an application to strike out and/or set aside the said CP vide a summons-in-chambers dated 3 April 1997 supported by an affidavit. The debtor also filed a notice of intention to oppose petition pursuant to r 117 of the Bankruptcy Rules ('the Rules') on 7 April 1997. These applications were opposed by the creditor who filed two affidavits in reply. The debtor then responded by filing two further affidavits in reply, one in respect of his intention to oppose the CP and the other in respect of his opposition to the BN. As I have said before, both the applications were heard by the learned senior assistant registrar who dismissed encl 14 but allowed encl 11. Hence the two appeals herein.

Let me begin with the debtor's appeal. Here, there was an application by the debtor to set aside the BN primarily on two grounds namely: (1) that the judgment was not a final judgment within the meaning of s 3(1)(i) Bankruptcy Act 1967 ('the Act') upon which the creditor founded the BN;

A and (2) that in any event, the debtor had established the existence of a counterclaim/cross demand under s 3(1)(i) aforesaid which would entitle him to have the BN set aside.

In respect of the first ground, counsel for the debtor has submitted that the debtor had lodged an appeal against the default judgment dated 30 January 1996 and that it was not a final judgment because it was not a judgment on the merits or one which would finally dispose of the rights of the parties until the appeal to the Court of Appeal had been disposed of. In this connection, he has relied on the case of *Re Udos ak Riging, ex p Seabanc Kredit Sdn Bhd* [1994] 3 MLJ 383 where the creditor obtained a default judgment against the debtor who then applied to have the judgment set aside. With respect, I think the Federal Court case of *Adzmi bin Ali & Anor v Mohamed Isa bin Kasad* [1987] 2 MLJ 199 cited by counsel for creditor, is more in point. There, it was held that if the claim was for a debt or liquidated sum and the defendant defaulted in entering appearance, final judgment for the sum could be entered against him. Seah SCJ said inter alia at p 200:

> Now, when a defendant fails to enter an appearance to a writ for an unliquidated sum, the plaintiff may enter interlocutory judgment against him for damages to be assessed (see O 13 r 2 of the Rules of the High Court 1980). *On the other hand, if the claim of the plaintiff is for a liquidated amount and the defendant defaults in entering an appearance within the specific time, final judgment for the sum claimed may be entered against him* (see O 13 r 1(1)). The court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order (see O 13 r 8). *In our opinion, the word 'judgment' in O 13 r 8 means a 'final' judgment under O 13 r 1(1)* or an 'interlocutory' judgment under O 13 r 2 thereof. (Emphasis added).

In my view, the parts italised above are particularly significant to the present case because the creditor's claim against the debtor was for a liquidated amount and the debtor had defaulted in failing to appear in court to counter the said claim in Civil Suit No D5-22-145-1995. In such a situation, applying the dictum of the Federal Court in *Mohamed Isa bin Kasad*, the judgment in default would constitute a final judgment for the sum claimed by the creditor against the debtor in this case. In the circumstances, I must hold that the first ground relied on by the debtor has no merit.

As regards the second ground advanced by the debtor that he had established satisfactorily the existence of a counterclaim or cross demand against the creditor under s 3(1)(i) Bankruptcy Act which would entitle him to have the BN set aside, he has drawn the court's attention to a Civil Suit No S2–22–480–1996 brought by him against the creditor, the particulars of claim are more specifically stated in cl 4.1 of his affidavit affirmed on 25 June 1998 which reads:

> Melalui Mahkamah Tinggi Kuala Lumpur Guaman No S5-22-480-1996 (Guaman Sivil 5), saya menuntut dari pemiutang sejumlah wang sebanyak RM1,633,064.30 berserta faedah pada 8% setahun dari 30 Jun 1994 hingga penyelesaian, iaitu satu jumlah yang jelas melebihi jumlah yang dihakimkan pada 30 Januari 1996 terhadap saya dalam Mahkamah Tinggi Kuala Lumpur Guaman Sivil D5-22-145-1995 (Guaman Dagang 5) dan juga jelas melebihi

jumlah yang dituntut oleh pemiutang melalui notis kebankrapan bertarikh 23 Ogos 1996 (notis kebankrapan tersebut). A

In rebuttal, counsel for the creditor has raised a procedural point contending, in effect, that the debtor could not rely on his affidavit affirmed on 25 June 1998 for non-compliance with s 3(1)(i) Bankruptcy Act and r 95 Bankruptcy Rules 1969. The application of the said section and rule has been adequately explained by Abdul Hamid JC (as he then was) in *Malayan Banking Bhd v Datuk Lim Kheng Khim* [1992] 2 MLJ 540 when he said at p 552: B

> The law as I understand it is, if a judgment debtor intends to satisfy the court that there is a counterclaim, set-off or cross-demand, he must file an affidavit within seven days of the service of the bankruptcy notice on him — s 3(1)(i) and r 95. Similarly, if he intends to dispute the sum stated in the bankruptcy notice as the amount due, he has to give notice to that effect (usually by affidavit), also within seven days — s 3(2) proviso (ii) and r 95. If he intends to object to the bankruptcy notice on other grounds, then he has to do it by way of a motion and the seven-day period is not applicable. C D

In the instant case, although the affidavit supporting the summons-in-chambers filed by the debtor was filed within the time frame provided under s 3(1)(i), it did not however allude therein that the debtor had a counterclaim, set-off or cross demand which would equal or, exceed the amount of the judgment or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained and therefore had not complied with the requirement under the said s 3(1)(i) of the Act and with r 95 of the Rules. The allusion to the existence of a counterclaim, set-off or cross demand was only deposed to in the debtor's subsequent affidavit, filed on or about 25 June 1998, well beyond the time frame allowed for under s 3(1)(i) of the Act and hence, again, there was non-compliance of the same. In the circumstances, on the authority of the Supreme Court in *Datuk Lim Kheng Khim v Malayan Banking Bhd* [1993] 2 MLJ 298, it must be treated as if no affidavit had been filed for the purpose of this application. E F

Now, it would seem that the debtor, in filing the summons-in-chambers (encl 14) together with the supporting affidavit had, in effect, disputed the sum stated in the BN by deposing (1) that the debtor had a defence on the merits and (2) that the interest of 8% pa imposed on the judgment was wrong in law. If it was intended to rely on s 3(2) proviso (ii) of the Act, there would still be a need to give seven days notice (see *Malayan Banking Bhd v Datuk Lim Kheng Khim*). There is no indication that the debtor had done so. G H

For the reasons stated, I am of the view that the second ground advanced by the debtor holds no water and I reject it accordingly. In the circumstances, having also rejected the first ground raised by the debtor, the only conclusion which can be reached is that there is no merit in the application at encl 14. I therefore uphold the decision of the learned senior assistant registrar and dismiss this appeal with cost. I

I come now to the creditor's appeal, which, as I have said, is against the decision of the learned senior assistant registrar in allowing the debtor's

A application in encl 11 to strike out or set aside the creditors petition (CP). There are essentially three grounds raised by the debtor in encl 11.

The first ground relates to the allegation that the CP was wrongly entitled. More specifically it has been alleged that the title to the CP should be 'Petisyen Sipiutang' and not 'Permohonan Sipiutang'. The short answer B to this is that the malay version of the rules, ie 'Kaedah-Kaedah Kebankrapan' published by the International Law Book Services has used the term 'Permohonan Sipiutang' in such a petition. In any event, I do not think it makes much difference whether the term 'Petisyen Sipiutang' or the term 'Permohonan Sipiutang' is used. They mean the same thing for the purpose of the CP. Perhaps because of this, counsel for the debtor has not C taken issue of it in this appeal.

In propagating the second ground, the debtor has alleged that the CP was not served together with the affidavit verifying the contents of the said CP thereby contravening the provisions of s 6(1) of the Act, which stipulates:

D

> A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served as prescribed.

According to counsel for the debtor, the words 'and shall be served as prescribed' refer to both the petition and the affidavit. He has also relied on E the authority of *Re Haroun Al-Rashid Bin Mohd Yusof; ex p Daya Leasing Sdn Bhd* [1996] 5 MLJ 317 in which the creditor was alleged to have failed to serve the verifying affidavit with the creditor's petition. It was held that s 6(1) Bankruptcy Act and r 106 Bankruptcy Rules were mandatory and therefore the failure to serve the affidavit verifying the petition on the judgment debtor could not be taken as mere irregularity that could be F cured. There was also reliance on *Ooi Thean Chuan v Banque Nationale de Paris* [1992] 2 MLJ 526.

In response to the above contention, counsel for the creditor submits that the court in *Re Haroun Al-Rashid* had wrongly applied *Ooi Thean Chuan* which merely decided the issue of whether the petition had to be attached G to or tied to or bound to the verifying affidavit when the petition was filed and the court there held that the verifying affidavit prescribed by r 106 was Form 11 which required the said petition to be so annexed to or bound to or attached to or joined to or affixed to or stapled to the verifying affidavit so as to avoid any dispute as to what was being verified and failure to do so, would make the petition irregular and not curable by s 131 Bankruptcy Act. H He went on to submit that since the issue to be decided in *Re Haroun Al-Rashid* was whether it was essential to serve the petition together with the verifying affidavit, the principle enunciated in *Ooi Thean Chuan* had no application to the present case. Counsel contends that the correct statement of the law was laid down in *Re Yap Kin; ex p United Malayan Banking Corp Bhd* [1996] 5 MLJ 355. He also relies on *Re Dato Othman Bokhari;* I *ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315. In *Re Yap Kin*, it was held obiter that it was not necessary to serve the verifying affidavit together with the petition since r 109 of the Rules did not mention the need to do so.

And in *Re Dato Othman Bokhari*, it was held that there was no requirement under the Bankruptcy Act or the Bankruptcy Rules that the verifying affidavit needed to be served and that the only document required to be served under s 6(1) of the Act was the petition.

Now, I think the wordings in s 6(1) of the Act are sufficiently clear and precise. It simply means that a creditor's petition has to be verified by affidavit of the creditor and has also to be served as prescribed. And the relevant provision for service is prescribed under r 109 of the Rules which stipulates:

> A creditor's petition shall be personally served and service shall be effected by an officer of the court or by the creditor or his solicitor or a person in their employment by delivering a sealed copy of the petition to the debtor.

In construing s 6(1) of the Act, I am inclined to accept the position taken in *Re Yap Kin* and *Re Dato Othman Bokhari*. In the instant case, as there was no statutory obligation on the part of the creditor under s 6(1) read with r 109 to serve the CP together with the affidavit of truth of statements in the petition affirmed by Song Knee Nyok, there could therefore be no violation of the provisions thereof. In the circumstances and for the reasons stated, I find no merit in the second ground advanced by counsel for the debtor.

In canvassing the third ground, counsel for the debtor has submitted that the CP was premature. It is his contention that at the time the CP was presented, the debtor had already filed an application to set aside the BN within the seven-day period prescribed by r 95 Bankruptcy Rules and therefore no act of bankruptcy was deemed to have been committed under the notice until the said application had been heard and determined. This point was indirectly raised by counsel for the debtor in his appeal earlier. Therein, I held that because of his failure to comply with the provisions of s 3(1) and (2) of the Act read with r 95 of the Rules, it must be treated as if no application by way of affidavit had been made. The so-called application by way of summons-in-chambers was therefore a non-starter. In the circumstances, I hold that the third ground has no merit whatsoever.

For the reasons stated, I must, with respect, disagree with the decision of the learned senior assistant registrar in allowing the debtor's application in encl 11. Accordingly, I think it is fair and appropriate to allow the creditor's appeal with cost.

Creditor's appeal allowed.

Reported by Benjamin Yong